IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3794 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAGAR SHAILESH RAMESHBHAI

Versus

THE STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3794 of 2001

MS KRISHNA U MISHRA for Petitioner No. 1

MR S.S.PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985

('the Act' for short), Commissioner of Police, District Magistrate, Bhavnagar, vide order dated March 10, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act and 5 offences under Chapter 17 of the IPC have been registered against the petitioner which are pending trial and statements of four witnesses are recorded, and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act is exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. K.U.Mishra, learned advocate for the petitioner has restricted her arguments to the effect that subjective satisfaction recorded by the detaining authority cannot be considered as genuine. In order to substantiate her submission, she placed reliance on the statements of four witnesses which were recorded on February 18, 2001 and verified by the detaining authority on March 9, 2001 and on the next date that is on March 10, 2001, order of detention came to be passed and therefore, it can be said that the detaining authority has not exercised powers under Section 9(2) of the Act properly as detaining authority had no sufficient time to examine the statements of witnesses. Besides this she has also contended that so far as registration of five offences for commission of the offences under Chapter 17 of the IPC are concerned, they are not relating to breach of public order but they are relating merely to the breach of law and order situation and therefore also, detaining authority has not exercised powers under Section 9(2) of the Act properly. On this sole ground, the order of detention deserves to be quashed and set aside.

5. Mr S.S.Patel, learned AGP has appeared on behalf of the respondent and has opposed the petition by filing an affidavit in reply sworn by K.A.Patel, District

Magistrate, Bhavnagar. He, however, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. A similar question arose in the case of KALIDAS C KAHAR V. STATE 1993 (2) GLR 1659 in which proposal was made on October 16, 1992 and detention order was passed on October 17, 1992 and therefore it was held to be a wrong exercise of power under Section 9(2) of the Act which has affeted the detenu's right of making an effective representation under Article 22(5) of the Constitution and therefore, the detention order was quashed.

8. Applying the aforesaid principle laid down by this Court to the facts of the present case, it is clear that the present case is identical to the case referred to above and here also statements of four witnesses are recorded on February 18, 2001 and verified by the detaining authority on March 9, 2001 and immediately on the next date that is on March 10, 2001 the detention order came to be passed, and hence, I am of the opinion that the order impugned cannot be sustained and deserves to be quashed and set aside.

9. So far as registration of 5 cases against the petitioner for commission of the offences under Chapter 17 of the IPC are concerned, obviously, they are not relating to breach of the public order, but at the most they can be said to be of breach of the law and order situation and therefore also detention order which is passed on the ground of breach of the public order stands vitiated.

10. On overall view of the matter the order of detention stands vitiated on both these grounds and the petition deserves to be allowed by quashing and setting aside the detention order and setting the petitioner at liberty.

11. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated March 10, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs.

Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*